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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Shanissa Romero, individually, and Stanley J.) Case No.: CV-17-01656-HRH
Kartchner, in his capacity as Trustee in)
Bankruptcy of the Estate of Shanissa Romero,)
Debtor,) **AMENDED COMPLAINT**

Plaintiffs,)

v.)

Check Into Cash, Inc., a Delaware corporation)
and Check Into Cash of Arizona, Inc., an)
Arizona corporation,)

Defendants.)

This is an action for violations of the Family and Medical Leave Act ("FMLA"),
29 U.S.C. § 2601 *et seq.*, and Title VII of the Civil Rights Act of 1964 ("Title VII"), as
amended, 42 U.S.C. § 2000e *et seq.*, as well as the amendments to Title VII contained in the

1 Pregnancy Discrimination Act of 1978.

2 **JURISDICTION AND VENUE**

3 1. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 as this is
4 a civil action arising under the laws of the United States. Specifically, this action is
5 brought under 29 U.S.C. §§ 206(d) & 2617(a) and 42 U.S.C. §§ 2000e(k) & 2000e-5(f).

6 2. This Court has personal jurisdiction over Defendants. Defendants are
7 located in Arizona, regularly transact business in Arizona, and/or have significant and
8 continuous contact with Arizona.

9 3. Venue is proper under 28 U.S.C. § 1391(b). All of the acts and/or
10 omissions giving rise to the claims occurred in this District.

11 4. Plaintiff, Shanissa Romero, has exhausted her administrative remedies with
12 regard to her Pregnancy Discrimination Act and Title VII claims by virtue having timely
13 filed a charge(s) of discrimination with the United States Equal Employment Opportunity
14 Commission and commencing this action within ninety days of receipt of her Notice of
15 Right to Sue. There is no administrative exhaustion requirement for FMLA claims.

16 **PARTIES**

17 5. Plaintiff, Shanissa Romero, (hereinafter, “Plaintiff Romero” or Ms.
18 Romero”) is a resident of Arizona. Plaintiff Romero worked for Defendant, Check Into
19 Cash of Arizona, Inc. between May 2011 and March 4, 2016 when she was involuntarily
20 terminated from her employment. At all relevant times, Plaintiff Romero was an
21 “eligible employee” within the meaning of the FMLA, 29 U.S.C. § 2611(2), and 42
22 U.S.C. § 2000e(f).

23 6. Plaintiff Romero filed a bankruptcy petition in the U.S. Bankruptcy Court
24 for the District of Arizona (Phoenix), Case No. 2:16-bk-03117-MCW on March 28, 2016
25 (hereinafter, the “Romero Bankruptcy Estate”). Some or all of Plaintiff Romero’s claims
26 and the damages she may recover in this action are or may be assets of the Romero
27 Bankruptcy Estate. By virtue thereof, the Romero Bankruptcy Estate is a Real Party in
28 Interest within the meaning of Fed. R. Civ. P. 17(a).

1 7. Plaintiff, Stanley J. Kartchner, (hereinafter “Plaintiff Kartchner” or
2 “Trustee Kartchner”) joins this action pursuant to Fed. R. Civ. P 19(a)(1) solely in his
3 capacity as Trustee in Bankruptcy and on behalf of the Romero Bankruptcy Estate.

4 8. Plaintiff Romero and Trustee Kartchner are jointly referred to, where
5 appropriate, as “Plaintiffs.”

6 9. At all times relevant, Defendant, Check Into Cash, Inc., (“CIC”) is and was
7 a Delaware corporation with its corporate headquarters in Cleveland, Tennessee. Upon
8 information, CIC was and is the parent corporation or holding company for Defendant,
9 Check Into Cash of Arizona, Inc. (“CICA”) and does transact business in the State of
10 Arizona, including in Gila County, through CICA under the registered tradename of
11 Check Into Cash.

12 10. At all times relevant, Defendant, CICA is and was an Arizona corporation.
13 Upon information, CICA was and is a wholly owned subsidiary of CIC. Defendant
14 CICA transacts business in the State of Arizona, including in Gila County, through under
15 the registered tradename of Check Into Cash.

16 11. Upon information and belief, CIC controls the operations of CICA through
17 uniform policies and practices as well as directions and instructions given to CICA
18 officers and directors, some of whom are the same for both CIC and CICA, thereby
19 making CIC and CICA joint employers of Plaintiff for purposes of this action.

20 12. At all relevant times, CIC and CICA were and continue to be engaged in
21 commerce within the meaning of the FMLA, 29 U.S.C. § 2611(1) and were Plaintiff’s
22 “employer” within the meaning of 29 U.S.C. § 2611(4) and 42 U.S.C. § 2000e(b).

23 **FACTUAL ALLEGATIONS**

24 13. In or around May 2011, Plaintiff Romero began working for CICA at its
25 Miami, Arizona location.

26 14. CIC and CICA are providers of sales financing and consumer financial
27 services.

28 15. At all times relevant, Plaintiff Romero was continuously employed by

1 CIC/CICA beginning in 2011 as a full-time employee and worked over 1,250 hours in
2 each year from 2011 until the time her employment ended on March 4, 2016.

3 16. Plaintiff Romero's most recent position was Manager of the Defendants'
4 Miami, Arizona location.

5 17. In October 2015, Plaintiff Romero learned she was pregnant with an
6 anticipated delivery date in early July 2016.

7 18. In or around early December 2015, Plaintiff Romero submitted a written
8 request for approved FMLA leave to begin on July 4, 2016 and end on or about August
9 15, 2016 due to pregnancy and expected delivery date. This request was sent to CIC's
10 Human Resource department in Cleveland, Tennessee. Plaintiff Romero was advised
11 that her FMLA leave request was approved.

12 19. In or around January 2016, Plaintiff Romero advised her District Manager,
13 Pete Davies, that she was pregnant and was intending to take time off for maternity leave.
14 Mr. Davies reacted negatively to this information.

15 20. In or around the middle of February 2016, Plaintiff Romero requested
16 additional, early FMLA leave for 2-3 days of time off because of a possible complication
17 associated with her pregnancy. Mr. Davies again demonstrated his disapproval.

18 21. On March 4, 2016, Plaintiff Romero was informed by District Manager,
19 Pete Davies, that she was terminated falsely claiming that she had violated a company
20 policy. Plaintiff Romero presented evidence confirming there had been no policy
21 violation but her termination was not rescinded.

22 22. Upon information and belief, Defendants' District Manager, Pete Davies,
23 did not want to deal with issues related to Plaintiff Romero's pregnancy, planned
24 maternity leave and the exercise of her FMLA rights and discriminated against Plaintiff
25 and interfered with her federally protected rights by falsely accusing her of a violation of
26 company policy so he could terminate her employment and replace her with a non-
27 pregnant employee.

28 23. Despite presentation of evidence that no policy violation has occurred, Mr.

1 Davies refused to reinstate Plaintiff Romero to her position and communicated
 2 information to CIC and CICA that was incomplete and misleading in order to support the
 3 termination and his decision not to reinstate Plaintiff Romero.

4 24. Thereafter, Plaintiff Romero attempted to provide information to CIC and
 5 CICA's Human Resources Department that there had been no policy violation but
 6 Defendants refused to consider the information and have failed to reinstate Plaintiff
 7 Romero.

8 **COUNT I**
VIOLATION OF FAMILY AND MEDICAL
 9 **LEAVE ACT, 29 U.S.C. §2601, et seq.**

10 25. Plaintiffs repeat and reallege each and every allegation contained in the
 11 previous paragraphs as though set forth fully herein.

12 26. At all times relevant herein, Defendants were and are each an "employer"
 13 subject to the FMLA. Plaintiff Romero was an "eligible employee" within the meaning
 14 of the FMLA and the regulations thereunder.

15 27. The FMLA, 29 U.S.C. § 2612(a), provides in relevant part:

16 [A]n eligible employee shall be entitled to a total of 12 work-
 17 weeks of leave during any 12-month period for one or more
 of the following:

18 A. Because of the birth of a son or daughter of the
 employee and in order to care for such son or daughter.

19 28. The FMLA, 26 U.S.C. § 2614, provides in relevant part:

20 (a) Restoration to position

21 (1) In general

22 Except as provided in subsection (b) of this section, any
 23 eligible employee who takes leave under section 2612 of this
 title for the intended purpose of the leave shall be entitled, on
 return from such leave--

24 (A) to be restored by the employer to the position of
 employment held by the employee when the leave
 commenced; or

25 (B) to be restored to an equivalent position with equivalent
 26 employment benefits, pay, and other terms and conditions of
 employment.

27 (2) Loss of benefits

28 The taking of leave under section 2612 of this title shall not
 result in the loss of any employment benefit accrued prior to
 the date on which the leave commenced.

1 29. Regulations under the FMLA, 29 C.F.R. §825.214(a), provide in relevant
2 part:

3 On return from FMLA leave, an employee is entitled to be
4 returned to the same position the employee held when leave
5 commenced, or to an equivalent position with equivalent
6 benefits, pay, and other terms and conditions of employment.
An employee is entitled to such reinstatement even if the
employee has been replaced or his or her position has been
restructured to accommodate the employee's absence.

7 30. The FMLA, 29 U.S.C. § 2615, further provides in relevant part:

8 (1) Exercise of rights

9 It shall be unlawful for any employer to interfere with,
10 restrain, or deny the exercise of or the attempt to exercise, any
right provided under this subchapter.

11 (2) Discrimination

12 It shall be unlawful for any employer to discharge or in any
other manner discriminate against any individual for opposing
any practice made unlawful by this subchapter.

13 31. Under the FMLA, Plaintiff Romero had a right to take FMLA leave as
14 requested and to be returned to her position as Manager of the Defendants' Miami,
15 Arizona office or an equivalent position with equivalent benefits, pay and other terms and
16 conditions of employment upon her scheduled return from approved FMLA leave.

17 32. As a result of the foregoing acts and omissions, Defendant has caused
18 Plaintiff Romero substantial damages, including, *inter alia*, monetary damages in the
19 form of past and future lost earnings and other economic damages for which Plaintiff
20 Romero is entitled to be compensated pursuant to 29 U.S.C. §2617(a)(1)(A). Some or all
21 of these amounts are or may be assets of the Romero Bankruptcy Estate.

22 33. In addition, Plaintiff Romero is also entitled to recover prejudgment
23 interest, attorney's fees and costs and is also entitled to such equitable relief as may be
24 appropriate and just. Defendants lacked good faith and reasonable grounds for believing
25 that its actions were not in violation of the FMLA such that Plaintiff Romero is entitled to
26 recover liquidated damages in accordance with 29 U.S.C. §2617(a)(1)(A)(iii).

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28 ///

COUNT II
(TITLE VII - DISCRIMINATION)

34. Plaintiffs incorporate previous paragraphs by reference as if fully set forth herein.

35. 42 U.S.C. §2000e-2(a)(1) provides, in pertinent part, that it shall be an unlawful employment practice for an employer:

[T]o . . . discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin.

36. 42 U.S.C. §2000e-2(a)(1), further provides, in pertinent part, that it shall be an unlawful employment practice for an employer:

[T]o fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual . . . because of such individual's race, color, religion, sex or national origin.

37. 42 U.S.C. §2000e(k) provides that:

The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, child birth or related medical conditions; and women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work..."

38. As set forth herein, Defendants unlawfully discriminated against Plaintiff Romero because of her sex by terminating her due to her pregnancy, anticipated childbirth and/or related medical condition.

39. By virtue of the foregoing violations of Title VII alleged herein, Plaintiff Romero has been damaged, has suffered economic loss, emotional distress, mental anguish and is entitled to backpay, interest thereon and compensatory and punitive damages pursuant to 42 U.S.C. §1981a because Defendants engaged in the unlawful discriminatory practices complained of herein with malice or with reckless indifference to Plaintiff Romero's federally protected rights. Some or all of these amounts are or may be assets of the Romero Bankruptcy Estate.

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CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM-ECF System for filing and transmittal of a Notice of Electronic filing to the following CM-ECF registrants:

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